

#### **§ 4.1274**

##### **§ 4.1274 Remand.**

The Board may remand cases if further proceedings are required.

##### **§ 4.1275 Final decisions.**

The Board may adopt, affirm, modify, set aside, or reverse any finding of fact, conclusion of law, or order of the administrative law judge.

##### **§ 4.1276 Reconsideration.**

(a) A party may move for reconsideration under § 4.21(d); however, the motion shall be filed with the Board within 30 days of the date of the decision.

(b) The filing of a petition for reconsideration shall not stay the effect of any decision or order and shall not affect the finality of any decision or order for purposes of judicial review.

[43 FR 34386, Aug. 3, 1978, as amended at 67 FR 61511, Oct. 1, 2002]

#### **APPEALS TO THE BOARD FROM DECISIONS OF THE OFFICE OF SURFACE MINING**

##### **§ 4.1280 Scope.**

This section is applicable to appeals from decisions of the Director of OSM concerning small operator exemptions under 30 CFR 710.12(h) and to other appeals which are not required by the Act to be determined by formal adjudication under the procedures set forth in 5 U.S.C. 554.

##### **§ 4.1281 Who may appeal.**

Any person who is or may be adversely affected by a written decision of the Director of OSM or his delegate may appeal to the Board where the decision specifically grants such right of appeal.

##### **§ 4.1282 Appeals; how taken.**

(a) A person appealing under this section shall file a written notice of appeal with the office of the OSM official whose decision is being appealed and at the same time shall send a copy of the notice to the Board of Land Appeals, 801 North Quincy Street, Arlington, Va. 22203.

(b) The notice of appeal shall be filed within 20 days from the date of receipt of the decision. If the person appealing has not been served with a copy of the decision, such appeal must be filed

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within 30 days of the date of the decision.

(c) The notice of appeal shall indicate that an appeal is intended and must identify the decision being appealed. The notice should include the serial number or other identification of the case and the date of the decision. The notice of appeal may include a statement of reasons for the appeal and any arguments the appellant desires to make.

(d) If the notice of appeal did not include a statement of reasons for the appeal, such a statement shall be filed with the Board within 20 days after the notice of appeal was filed. In any case, the appellant shall be permitted to file with the Board additional statements of reasons and written arguments or briefs within the 20-day period after filing the notice of appeal.

[43 FR 34386, Aug. 3, 1978, as amended at 49 FR 7565, Mar. 1, 1984; 67 FR 4368, Jan. 30, 2002]

##### **§ 4.1283 Service.**

(a) The appellant shall serve personally or by certified mail, return receipt requested, a copy of the notice of appeal and a copy of any statement of reasons, written arguments, or other documents on each party within 15 days after filing the document. Proof of service shall be filed with the Board within 15 days after service.

(b) Failure to serve may subject the appeal to summary dismissal pursuant to § 4.1285.

##### **§ 4.1284 Answer.**

(a) Any party served with a notice of appeal who wishes to participate in the proceedings on appeal shall file an answer with the Board within 20 days after service of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal.

(b) If additional reasons, written arguments or other documents are filed by the appellant, a party shall have 20 days after service thereof within which to answer. The answer shall state the reasons the party opposes or supports the appeal.

##### **§ 4.1285 Summary dismissal.**

An appeal shall be subject to summary dismissal, in the discretion of the